

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2023 MAR -6 AM 8:57

STATE OF WASHINGTON

Respondent,

v.

LARRY BLACKWELL  
(your name)

Appellant.

STATE OF WASHINGTON

No.

57194-

3 BY DEPUTY RI

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, LARRY BLACKWELL have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

PLEASE SEE ATTACHED BRIEF

R.C.W. 9A.533(3) WAS IN EFFECT AT THE TIME BLACKWELL'S  
CRIMES WERE COMMITTED IN JULY 2004, AUTHORIZING THE SUPERIOR  
COURT TO IMPOSE FIREARM SENTENCING ENHANCEMENTS AS PART OF A  
CRIMINAL SENTENCE. (Quoting Acting Chief Judge Pro Tem "PRICE"  
CAUSE ST07-8-11) THEN WHY WAS R.C.W. 9A.510 USED AND NO SUBSECTION  
CITING THE FIREARM STATUTE? GIVING DEFENDANT NO NOTICE OF STATE'S INTENTION  
TO SEEK ENHANCE PENALTY.

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 3.1.22 ~~23~~

Signature: Larry Blackwell

THE COURT OF APPEALS STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON,  
Plaintiff,

v.

LARRY BLACKWELL,  
Defendant.

NO. 57194-3-II

STATEMENT OF  
ADDITIONAL GROUNDS

RAP 10.10

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I. IDENTITY

I, Larry Dwayne Blackwell, move this court for relief sought in this motion.

2) GROUNDS

1. An Unconstitutional statute renders a Judgement and Sentence invalid on its face.
2. The statute imposed was in excess of the court's jurisdiction 10.73.100(5), when the trial court exceeded its authority, in imposing enhancements not authorized by the changes.

3. R.C.W. 9.94A.510 was expired as to enhancements and was not the applicable statute to charge penalties.

4. R.C.W. 9.94A.510 At the time of defendant's crime was not the proper statute to charge said enhancements.

#### Remedy

The State failed to elect an enhanced penalty, the said enhancements should be vacated. An expired R.C.W. was used in the charging information making the enhancement issued null and void.

#### Argument

1) This said motion is not time barred by R.C.W. 10.73.090. R.C.W. 10.73.090 imposes a one-year time limit on motions for collateral attack, provided the Judgement and Sentence is invalid on its face, and rendered by a court of competent jurisdiction. R.C.W. 10.73.090(1)

In State v. Blake, the Supreme Court of Washington held the strict liability drug possession statute was unconstitutional, as it violated due process and exceeded the Legislature's police power. As a result, the statute "violates the due process clauses of the State and Federal constitutions, and is voided." State v. Blake 197 Wn2d. 170,173,195 481 P.3d 521 (2021)

A Judgement is not valid on its face if the conviction, without further elaboration, evidences, infirmities, of constitutional magnitude. In *Re Personal Restraint of Thompson* 141 Wn2d, 721, 10 P.3d 380 (2000). A sentence that was valid at the time it was entered can become invalid on its face if there is a change in circumstances after the fact. *Id.* "Under such circumstances, the one-year time limit of R.C.W. 10.73.090 does not apply." *Id.* A conviction for a non-existent crime is one such example of a constitutional infirmity that renders a judgement facially invalid. In *Re Pers Restraint of Hinton* 152 Wn2d. 852 859-860, 100 P.3d 801 (2004). This is true, even where the defendant pled guilty to the nonexistent crime. See *Hinton* 152 Wn2d. at 861.

When you look at defendant Blackwell's Judgement and Sentence on 12.23.02 and on 10.25.06 (see Ex.B) He pled to two unlawful Possession of Controlled Substances charges. Our State Supreme Court has now decriminalized and deemed the statute unconstitutional. For this reason Blackwell's current conviction for Assault, in the first degree's (04-1-03569-6) Judgement and Sentence is invalid and this motion should be heard as timely.

Should this motion be illegally transferred to the Court of Appeals and not properly remanded back (as In-*Re Ruiz-Sanabria*, 184 Wn2d. 632 (2015, See also RAP 16.8.1), the defendant reserves supplementation of the following additional grounds:

The Superior Court does not have authority to dismiss a CrR 7.8 motion if it's untimely under R.C.W. 10.73.090. The Superior Court may rule on merits of the motion only when the motion is timely filed and (a) the defendant makes a substitutional showing that he is entitled to relief, or (b) the motion cannot be resolved without a factual hearing. Only when these prerequisites are absent, may the Superior Court confer a timely petition to the Court of Appeals as a Personal Restraint Petition. State v. Smith 144 Wn app 863 (2008).

The sentence imposed was in excess of the court's jurisdiction 10.73.100(5) when the trial court exceeded its authority in imposing enhancements not authorized by the charges.

2) Sentencing enhancements such as deadly weapon allegations must be included in the information In Re Pers Restraint of Bush 95 Wash 2d 551,554, 627 P.2d 953 (1981) When the term sentence enhancement describes an increase beyond the maximum authorized statutory sentence, it becomes the equivalent of an "element" of the greater offense than the one covered by the jury's verdict. Blakley v. Washington 542 U.S. 296,303 124S.Ct 2531, 159 L.Ed 2d 403 (2004) Apprendi v. New Jersey 530 U.S. 466, at 498 120 S.Ct. 2348, Washington law requires the state to allege in the information, the crime which it seeks to establish. This includes sentencing enhancements. See State v. Crawford 159 Wash 2d 185, 94 147 P.3d 1288 (2006). Where the State does not give notice of specific enhanced penalty it ultimately seeks to invoke, the

court may not impose that enhanced penalty. State v. Recuenco  
III, 163 Wn2d. 428, 433-37 (citing State v. Theroff, 95 Wn2d.  
385, 392-93, 622 P.2d 1240 (1980)). Blackwell was charged in  
count I, II, armed with a firearm, to wit: a handgun (see Ex. A)

As defined in R.C.W. 9.94A.310/9.94A.510 (See Ex. E), recodified  
as R.C.W. 9.94A.533 (See Ex. C) contain the sentencing  
enhancements a defendant can be charged with to give him the  
ability to prepare a defense for a deadly weapon. State v.  
Recuenco 163 Wn2d. at 435-36. Unless a complaint is properly  
amended, once the state elects with specific charges it is  
pursuing and includes elements in the charging document, it is  
bound by the decision. State v. Theroff 95 Wash at 392, 622 P.2d  
1340.

To wit, a firearm is not an enhanced penalty and did not give  
Blackwell notice or the ability to prepare a defense. A right  
defendants have covered in article I § 22 of the Washington State  
Constitution provides in a criminal prosecution defendants have a  
right to be informed of the accusation against them, The  
inclusion of the other than a firearm language makes it clear  
that the hard time for armed crime act treats firearm enhancement  
per former R.C.W. 9.94A.310(3) and deadly weapon other than a  
firearm enhancement per former R.C.W. 9.94A.310(4) as two subsets  
of the larger category of deadly weapon enhancements In Re Pers  
Restraint of Cruz 169 Wn2d. 422 (2010).

Prosecutors are gate keepers of justice and have a wide latitude in their ability to charge defendants depending on the severity and intent of the crime at hand. With that heavy hand a prosecutor still has standards and procedures they must follow to attain justice R.C.W. 9.94A.470 (See Ex. D) Armed offenders. Notwithstanding the current placement or listing crimes in categories or classifications of prosecuting standards or classification of prosecuting standards for deciding to prosecute under R.C.W. 9.94A.411(2) Any and all felony crimes involving a deadly weapon enhancement under R.C.W. 9.94A.533(3) or (4) or both. It must be noted that these prosecuting standards are not just to give Blackwell notice, but to ensure justice is served, as stated all felonies under R.C.W. 9.94A.533(3) or (4) or both, meaning one of them or all of them can or should have been charged. The felony traffic enhancement required the court to add 366 days to the sentence if the defendant endangered others while attempting to elude a police vehicle R.C.W. 9.94A.533(11). The information did not include the notice of the State's intent to seek a felony traffic enhancement. State v. Ames 2019 Wash App Lexis 1491 (2019).

In Delgado the charging document alleged the defendant committed their crime while armed with a deadly weapon; to wit a firearm, but did not specify that it was charging under former R.C.W. 9.94A.510(3) or (4). State v. Delgado 149 Wash App 223,204 P.3d 936. The additional rule announced in Recuenco III 180 P.3d 1276 (2008) that a firearm enhancement must be charged with explicit

particularity in order to authorize a firearm enhancement at sentencing also was a new rule. (quoting) In Re Pers Restraint of Jackson 175 Wn2d. 155 (2013). In State v. Pourier 147 Wn App. 1032 (2008). The amended information did not allege a firearm sentencing enhancement under R.C.W. 9.94A.533(3). It simply charged Pourier with a notice of a deadly weapon firearm allegation under 9.94A.602 This was inadequate. The mere recitation of a numerical code section and the title of an offense does not satisfy the essential elements rule. City of Auburn v. Brooke 119 Wash2d 623,627,836 P.2d 212 (1992) (quoting State v. Zillyette 307 P.3d 712). When charging Blackwell in the amended information, the State did not give notice of which section of 9.94A.510 (See Ex. E) recodified as 9.94A.533 (See Ex. C) It was invoking. Instead it generally referenced section 9.94A.510 requiring petitioner to locate the relevant code and determine "the elements of the defense from the proper code section" is an unfair burden to place on the accused State v. Zillyette 179 Wn2d. 153,307 P.3d 712,717 (2013).

First, we must look to the three statutory provisions at issue: former R.C.W. 9.94A.510(3) (2001), former R.C.W. 9.94A.510(4), and former R.C.W. 9.94A.620 (2001) recodified as R.C.W. 9.94A.825. Former R.C.W. 9.94A.510(3) or (4) provide mandatory sentence enhancements where the defendant was armed with a "firearm" or "deadly weapon other than a firearm." Prosecutors must charge defendants with one of these enhancements. State v. Williams-Walker 167 Wn2d. 889 (2010).



In liberally construing the charging document, we employ the two-pronged Kjorsvik test: (1) do the necessary elements appear in any form, or by fair construction, on the face of the document and if so, (2) can the defendant show he or she was actually prejudiced by the unartful language. State v. Kjorsvik 117 Wash 2d 93 at 105-06, 812 P.2d 86. If the defendant satisfies the first prong of the test, "we presume prejudice and reverse without reaching the question of prejudice. State v. McCarthy 140 Wash 2d. at 425, 998 P.2d 296.

Upon review of Blackwell's charging document, in count I and count II, reads as follows: Invoking the provisions of R.C.W. 9.94A.310/9.94A.510. The element of firearm (3) and the element of deadly weapon (4) are missing. In State v. Recuenco, the Washington Supreme Court held that sentencing enhancements must be included in the information. State v. Recuenco, 163 Wn2d. at 434. Artful or unartful, there is no way to supplement the lack of notice provided to the defendant and the unconstitutional protections that were violated. The State failed to elect an enhancement, the enhancements must be vacated.

3. R.C.W. 9.94A.510 was expired as to enhancements and was not the applicable statute to charge enhanced penalties:

The hard time for hard crime act initiative 159 (2)(a):  
stigmatize the carrying and use of any deadly weapons for all

felonies with proper deadly weapon enhancements. Also: section (2)(d) bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes. Initiative 159 went into effect on 7/23/95 along with R.C.W. 9.94A.310 which contained six subsections the State had authority to charge with and the judge had the power to sentence a defendant to. Then in 2000 R.C.W. 9.94A.310 was recodified and replaced with R.C.W. 9.94A.510. The only change was it added another enhancement, one for vehicular homicide. Then in 2002 R.C.W. 9.94A.510 was recodified again which would go in effect on 7/1/2004. This recodification would remove all the enhancements from R.C.W. 9.94A.510 (See Ex. E) leaving it and its only job as the sentencing grid. All enhancement statutes would be found under R.C.W. 9.94A.533 (See Ex. C) This new R.C.W. added seven new enhancement statutes, a gang enhancement, sex conduct, sex motivation, etc. This new R.C.W. was needed to cover the ever changing landscape of crime and have the ability to enhance the sentence of the new wave of offenders.

In State v. Kelley 168 Wn2d. 72 2009

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Kelley was convicted of assault under R.C.W. 9A.36.021(7) which provides for guilt of second degree assault when the offender assaults another with a deadly weapon sentence enhancement were

imposed pursuant to R.C.W. 9.94A.533(3) which mandates imposition of firearm sentence enhancements for felonies if the offender or an accomplice was armed with a firearm during the commission of felony enhancement-eligible crimes subject to express expectations.

The firearms enhancement provisions at issue were originally enacted as part of initiative 159 Hard time for Armed crime an initiative to the legislature that it enacted in 1995 laws of 1995 ch 129 § 2 (R.C.W. 9.94A.310(3)(e),(f) recodified as 9.94A.533(3) The statute unambiguously states that firearm enhancements are mandatory: notwithstanding any other provision[s] of law, all firearm enhancements under this section are mandatory.) R.C.W. 9.94A.533(3)(e)

At the time the firearm enhancement provisions were enacted, other criminal statutes provided for convictions of offenses where use of a firearm is an element of the crime. In particular, use of a firearm could then, as now be an element of second degree.

When a person pleads guilty or is convicted depending on how many previous felonies he has, his sentence will be determined by going to R.C.W. 9.94A.510 (See Ex. E) and locating the seriousness level of the crime and determining how many felonies he or she has in the past is how much time he or she will be required to serve. R.C.W. 9.94A.510 previously 9.94A.310 is the sentencing grid when you Google, or Nexus Lexus search it, it

comes up as the sentencing grid. Before its recodification in 2002 c 290 it contained all the enhanced penalties the State could charge you with and that you could be sentenced to. As of its recodification in 2002 9.94A.510 became solely the sentencing grid, the enhancement portion was transferred over to 9.94A.533. When you look to the first codification date of the statute (See Ex. C) It is 2002 c 290 §. The first section of 9.94A.533 (1) states: The provisions of this section apply to the standard ranges determined by R.C.W. 9.94A.510 or 9.94A.517 which is the sentencing grid for drug offense. R.C.W. 9.94A.510 transferred its power to enforce enhancements when R.C.W. 9.94A.533 went into effect July 1, 2004.

A reasonable question needs to be asked when a statute is recodified has its time lapsed and reached its statute of limitation, upon recodification what is the legislative intent of R.C.W. 9.94A.510, and what is the legislative intent of R.C.W. 9.94A.533

In State v. Conner 183 Wn2d 706 2015, 355P.3d 1093 (2015)

This court reviews questions of statutory interpretation de novo. In construing a statute, a reviewing court seeks to determine and carry out the legislature's intent. This court determines legislative intent from the statutes plain language considering the text of the provision in question, the context of the statute in which the provision is found, related provisions amendments to

the provisions and the statutory scheme as a whole. A statute is ambiguous if it is susceptible to more than one reasonable interpretation: only then does this court use statutory construction, legislative history, and relevant case law to help discern legislative intent. *Ass'n of Washington Spirits + wine distribs v. Wash State Liquor Control Bd.* 182 Wn2d. 342, 350, 340 P.3d 849 (2015). The rule of lenity requires that a court interpret an ambiguous statute in the defendant's favor absent legislative intent to the contrary. *St v. Conner*.

As *State v. Conner* says a statute is ambiguous if susceptible to more than one reasonable interpretation. As of July 1, 2004 R.C.W. 9.94A.510 was plain in its codification. It was meant to house the sentencing grid and nothing more or the legislative branch would have included it in its provisions (See Ex. E)

When R.C.W. 9.94A.310 was recodified as 9.94A.510 there were just additions made no major overhauls. It's easy to see the legislative intent from one to the other, but when you totally discontinue a whole section you change the intent of 9.94A.510. It can be said that in its recodification the statute of limitation had run as enhancements to R.C.W. 9.94A.533 (See Ex. C) heading reads as follows: "Adjustments to standard sentences" and R.C.W. 9.94A.510 is where you locate and find the applicable standard range. The first section of "533" states the provisions of this section apply to the standard ranges determined by R.C.W. 9.94A.510 or 9.94A.517. It is clear that "533" replaced "510" as

far as enhancements since that's all "533" is. The next hurdle is when does 9.94A.533 take effect. They both have codification dates of 2002 § 290. (See Ex. C) and (Ex. E)

July 1, 2004 was R.C.W. 9.94A.533's effective date. I was charged with R.C.W. 9.94A.510 on July 6, 2004, with a firearm and a deadly weapon after R.C.W. 9.94A.510 had expired I should have been charged with 9.94A.533(3)(a). the applicable statute.

Quoting In Re Personal Restraint of Swagerty 186 Wn2d 801 2016 held that the statute of limitations bars prosecution of charges commenced after the period prescribed in the statute Id. At Personal Restraint of Stoudmire 141 Wn2d. 355 (2000)

In State v. Peltier 181 Wn2d 290,297 2014 332 P.3d 457 (2014)

The Court of Appeal Division One held that a criminal statute of limitations is not jurisdictional, but rather determines the court's statutory authority to hear a case State v. Peltier 176 Wn App 732, 737 309 P.3d 506 (2013)

We reasoned that because a criminal statute of limitation is jurisdictional, an info which charges a crime beyond the statute of limitations is void on its face and therefore there is nothing to which an amendment can relate back. State Novotwy 76 WnApp 343,345 884 P.2d 1336 (1994) Because the criminal statute of limitations is jurisdictional and creates an absolute bar to

prosecution.

A criminal statute of limitations presents a jurisdictional bar to prosecution. It is not merely a limitation upon the remedy, but a limitation upon the power of sovereign act against the accused quoting (St v Glover 25 WnApp at 61) St v Phelps 113 WnApp 357 St v Walker 153 WnApp 701,705 224 P.3d 814 2009

Our constitution gives original jurisdiction to the superior court in all criminal cases amounting to a felony Wash Const Art IV § 6. A statute of limitations does not take away that fundamental right of the superior court to hear that type of controversy: it limits only the time in which the court can exercise that authority State v. Peltier 176 WnApp. 744-45

It is clear that the recodification in R.C.W. 9.94A.510 was more than just an upgrade like it was with the previous recodification with 9.94A.310 when more sections as far as enhancements were added. The recodification from 9.94A.510 to 9.94A.533, the enhancement portion was totally removed and given to a brand new statute. R.C.W. 9.94A.510 had expired as to enforcement of enhancements.

In State v. Thomas 2010, Wash App Lexis 1654 Thomas claimed that he was denied due process and the firearm enhancement must be reversed because the information cited an inapplicable former statute. In particular, the information charged that under the

authority of R.C.W. 9.94A.310(3). But before the dates Thomas was alleged to have committed his offense, the legislature had recodified the firearm enhancement such that the correct statute was former R.C.W. 9.94A.510 (2001) CrR 2.1(a)(1) provides, in part, "error in the citations its omission shall not be grounds for dismissal of the indictment or information or for reversal of conviction if the error or omission did not mislead the defendant to the defendant's prejudice." State v. Vanggerpeas 125 Wn2d. 782 (1955). State v. Kjorsvik 117 Wn2d 93.101 812 P.2d 86 (199) (primary goal of rule requiring information to contain essential elements of the charge is to give the accused notice of the nature of accusation against him so that he can prepare adequate defense.)

Similar in nature, but not in substance. Blackwell was charged with an expired version of R.C.W. 9.94A.510 which had been recodified as 9.94A.533, Blackwell was charged on July 6, 2004 and 9.94A.510, as to enhancements, expired on July 1, 2004. The issue that separates the two cases is the fact that in State v. Thomas he was given notice under the subsection (3) firearm of the State's intention to seek an enhanced penalty. Blackwell received no notice of the State's intention to seek an enhanced penalty. Also since the subsection is the enhancement and enhancements are elements that must be plead in the indictment. The charging document would not pass the State v. Kjorsvik analysis and prejudice should be found. The effect of the statute of limitations in former 9A.04.080 is to limit the trial court's



authority to enter a judgement against a defendant if the State did not commence the prosecution before the statute of limitations expired. State v. Peltier 181 Wn2d 290,298 332 P.3d 457, If a trial court lacks authority to enter a conviction, that conviction must be vacated. In Re Pers Restraint of Swagerty 186 Wn2d 810, the R.C.W. 9.94A.510 was expired, also it did not meet the essential elements rule. The R.C.W. 9.94A.510 was the provision which the elements are issued. The enhancements should be vacated.

4. R.C.W. 9.94A.510 at the time of defendant's crime was not the proper statute to charge said enhancements.

Washington State has long required the State to include in the charging documents the essential elements of the crime alleged. City of Auburn v. Brooke, 119 Wash 2d 623,627,836 P.2d 212 (1992). The essential elements rule requires a charging document allege facts supporting every element of the offense and identify the crime charged. State v. Leach, 113 Wash 2d. 679,689 782 P.2d 552 (1989). The purpose of the essential elements rule is to provide defendants with notice of the crime charged and to allow defendants to prepare a defense State v. Campbell 125 Wash 2d 797,801 88 P.2d 1185 (1995)

Sentencing enhancements, such as deadly weapons allegations, must be included in the information. In Re Pers Restraint of Bush, 95 Wash 2d 551,554,627 P.2d 953 (1981). When the term "sentence enhancement" describes an increase beyond the maximum authorized

statutory sentence, it becomes the equivalent of an "element of a greater offense than the one covered by the jury's guilty verdict. Apprendi, 590 U.S. at 494 n. 19, 120 S.Ct 2348. Contrary to the dissent's assertions, Washington's law requires the State to allege in the information the crime which it seeks to establish. This includes sentencing enhancements. See State v. Crawford, 159 Wash 2d. 86,94,147 P.3d 1288 (2006) (Stating that prosecutors must set forth their intent to seek enhanced penalties for the underlying crime in the information.

When the State charged R.C.W. 9.94A.510 and used it to enhance the defendant's sentence it was moving beyond its legislative power. A void judgement is one entered by a court which lacks the inherent power to make or enter the particular order involved. Dike v. Dike 75 Wn2d 1,7,448 P.2d 490 (1968)(quoting Robertson v. Commonwealth 181 Va.520,536,25 S.E.2d 352 (1943).

Since gun enhancements are elements of the crime and R.C.W. 9.94A.510 lacked the power to adjudicate and administer a sentence since it had been delegated to being "just" the sentencing grid. Seeing that a recodification and transfer of powers to R.C.W. 9.94A.533 had taken place the sentencing enhancements became the equivalent of a nonexistent crime. R.C.W. 9.94A.510 was unconstitutional to said conduct. When a criminal defendant pleads guilty to violating a statute that is found unconstitutional, the judgement and sentence is void. Kahlor v. Squire 49 Wn2d. 911 299 P.2d 570. A criminal defendant's guilty plea to a non-existent crime is an invalid plea and must be set

aside. State v. Tarrer, 140 WnApp 166, 169-170 165 P.3d 35 (Div II 2007). An individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law and thus cannot waive such a challenge. In Re Pers Restraint of Hinton 152 Wn2d. 853 at 861 100 P.3d 801 (2004) When the State chose to charge a crime by way of an R.C.W. that could no longer enforce it. It became the equivalent of a non-existent crime. The enhancement should be removed from count I and count II.

As in State v. Recuenco 180 P.3d 1276, the prosecutor chose to charge the lesser enhancement of "deadly weapon." Former R.C.W. 9.94A.310(4)(b), which was a 12 month enhancement, but at sentencing the judge sentenced him to the more serious firearm enhancement of 36 months. 9.94A.310(3)(b). In State v. Recuenco the courts found that it was wrong to sentence a defendant to the wrong enhancement. How much more egregious is it to sentence a defendant to an enhancement not charged in his information. In State v. Recuenco he was charged with second degree assault with a deadly weapon, to-wit a handgun pursuant to former R.C.W. 9.94A.310(4)(b). In Defendant Blackwell's charging information it is stated in count I & II was armed with a firearm to-wit: a handgun that being a firearm as defined in R.C.W. 9.41.010 and invoking the provisions of 9.94.310/9.94A.510. By the State failing to select a subsection. The defendant was sentenced to 96 months of prison time, with no eligibility for good time on the 96 months. As stated in Recuenco it can never be harmless to sentence someone to something he was never charged with. The

prejudicial prong has been met, a defendant has a right to be notified of the charged offense and afforded the ability to prepare a defense, as required by Washington State and the Federal Constitution.

I was resentenced on my Assault in the First degree and my Attorney Warren Corey didnt submit my notice of Appeal paperwork properly. When I was unsure about whether I was going to have my issues heard, I filed a 7.8. It was eventually transferred up to the Court of Appeals. It was heard under cause number 57507-8-II (see Ex.G). In the said motion I challenged the same issues, I am raising now, lack of notice of the States intention to seek an enhanced penalty, charging generally under 9.94A.510. I also raised the States use of 9.94A.510 as it was expired as to enhancements, 9.94A.533 was in effect at the time.

On Feb 6,2023, I received the Court of Appeals decision on that brief. I was denied on the grounds, of being time barred. In the brief the court also stated that R.C.W. 9.94A.533 (3) (see Ex.G) was in effect at the time of my crime in 2004. Yes this is correct and its a direct admission to the issues I am raising. The courts contention that 9.94A.533 (3) ~~was~~ the correct statute, would have protected my constitutional rights of being notified of the charges against me, because gun enhancements are element that must be allege in the charging document. Also, with the use of 9.94A.533 (3) it would have the proper statute in effect instead of 9.94A.510 which had expired as to enhancements on July 1,2004 and my crime was committed on July 6,2004 (see Ex.A). Also, R.C.W. 9.94A.510 by this time it was just the sentencing grid eliminating the ability for me

to locate the codes and statutes I violated. By the Courts admission 9.94A.533 (3) was the R.C.W. in effect at the time it was admitting error. Why is R.C.W. 9.94A.533. nowhere in my charging information, not mention on count II my charge is second degree Assault with a deadly to with a handgun, this a class B felony for a firearm 533 (3)(b) is 36 months and for a deadly weapon 533 (4)(b) is 12 months. The problem is I am charged with second degree Assault with a deadly weapon. To cure the confusion, for a person who is not a lawyer or judge, the legislature wrote the statute as follows 9.94A.533 (1) the provisions of this section apply to the standard ranges determined by R.C.W. 9.94A.510 or 9.94A.517. The use of those sections would tell the defendant and the judge which enhancement applies, by this given him notice of the States intention to seek an enhanced penalty State v. Theroff.

I would ask this court to stand by its admission as stated in cause # 57507-8-II, that 533 (3) is the correct statute, at the time of my charging. Thus giving me notice of the States intention to seek an enhanced penalty. Instead of charging me generally, leaving it up to me to locate the code and Statute I was to be violating State v. Zillyette.

I have a constitutional right to a proper charge and elements in my charging and the amount of prejudice is 96 more months in prison. I ask the court what is the statutory legislative intent of 9.94A.510 at the time of July 6,2004?

Assault in the First degree with a firearm 9.94A.533 (3)(A),

Assault in the Second degree with a deadly weapon 9.94A.533 (4)(b).

This is how my charging information should have read, also in count II,

I had already been acquitted of First degree Assault with a firearm so the State would have been precluded from using firearm information again. Hence the second degree with a deadly.

#### COURT REVIEW

When a trial court exercises its discretion in sentencing, it must do so within the bounds of the sentencing laws. State v. Manussier 129 Wn 2d 652, 668, 921 P.2d 719.

#### CONCLUSION

Petitioner simply and clearly by record demonstrated trial court error in imposing firearm enhancements without the State alleging the specific enhanced penalty. It is a complete miscarriage of justice to sentence someone under an expired statute. The remedy for these errors is vacation of the enhancements and remand for resentencing, without said enhancements.

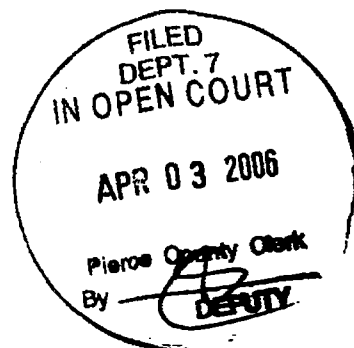
Respectfully, Larry Blackwell

Larry B Blackwell

# **EXHIBIT A**



04-1-03569-6 25387871 AMINF 05-02-08



## SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03569-6

vs.

LARRY DWAYNE BLACKWELL,

AMENDED INFORMATION

Defendant.

DOB: 10/7/1975

SEX : MALE

RACE: BLACK

PCN#:

SID#: 21040303

DOL#: UNKNOWN

## COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LARRY DWAYNE BLACKWELL of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That LARRY DWAYNE BLACKWELL, in the State of Washington, on or about the 6th day of July, 2004, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault David Vicenzi and inflict great bodily harm, contrary to RCW 9A.36.011(1)(c), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

## COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse LARRY DWAYNE BLACKWELL of the crime of ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

AMENDED INFORMATION- 1

ORIGINAL

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400



1 That LARRY DWAYNE BLACKWELL, in the State of Washington, on or about the 6th day of  
2 July, 2004, did unlawfully and feloniously, under circumstances not amounting to assault in the first  
3 degree, intentionally assault Diana Bucenski with a deadly weapon, to-wit: a handgun, contrary to RCW  
4 9A.36.021(1)(c), and in the commission thereof the defendant, or an accomplice, was armed with a  
5 firearm, to-wit: a handgun, that being a firearm as defined in RCW 9.41.010, and invoking the provisions  
6 of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in  
7 RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

6 COUNT **IV**

7 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
8 authority of the State of Washington, do accuse LARRY DWAYNE BLACKWELL of the crime of  
9 UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, a crime of the same or  
10 similar character, and/or a crime based on the same conduct or on a series of acts connected together or  
11 constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and  
12 occasion that it would be difficult to separate proof of one charge from proof of the others, committed as  
13 follows:

14 That LARRY DWAYNE BLACKWELL, in the State of Washington, on or about the 6th day of  
15 July, 2004, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a  
16 firearm, having been previously convicted in the State of Washington or elsewhere of a felony that is not  
17 a serious offense as defined in RCW 9.41.010(12), contrary to RCW 9.41.040(2)(a)(i), and against the  
18 peace and dignity of the State of Washington.

19 DATED this 3rd day of April, 2006.

20 TACOMA POLICE DEPARTMENT  
21 WA02703

GERALD A. HORNE  
Pierce County Prosecuting Attorney

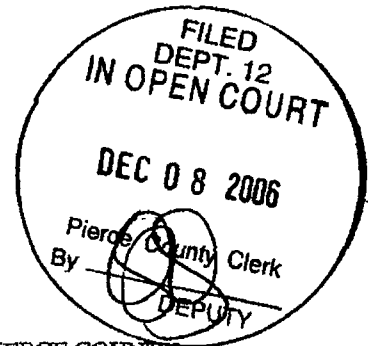
22 kls

By: 

GREGORY L. GREER  
Deputy Prosecuting Attorney  
WSB#: 22936

## **EXHIBIT B**

04-1-03569-6



## SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

DEC 11 2006

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03569-6

vs.

## JUDGMENT AND SENTENCE (FJS)

LARRY DWAYNE BLACKWELL

Defendant.

☒ Prison ☐ RCW 9.94A.712 Prison Confinement  
☐ Jail One Year or Less  
☐ First-Time Offender  
☐ SSOSA  
☐ DOSA  
☐ Breaking The Cycle (BTC)  
☐ Clerk's Action Required, para 4.5 (DOSA),  
 4.15.2, 5.3, 5.6 and 5.8

SID: 21040303  
 DOB: 10/07/1975

## I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

## II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10-26-2006  
 by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT FIRST DEGREE, (E23)	9A.36.011(1)(c) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	07/06/04	041880039
II	ASSAULT SECOND DEGREE, (E28)	9A.36.021(1)(c) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	07/06/04	041880039
III	UNLAW POSS FIREARM SEC. (GGG104)	9.41.040(2)(a)(i)	NONE	07/06/04	041880039

06-9-14313-3

04-1-03569-6

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

- ☒ [X] A special verdict/finding for use of firearm was returned on Count(s) I, II RCW 9.94A.602, .510.  
☐ [ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):  
☐ [ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

## 2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	HARASSMENT	12/23/02	PIERCE	04/28/02	ADULT	NV
2	VUCSA UPCS	12/23/02	PIERCE	04/28/02	ADULT	NV
3	ATT ELUDE	06/03/04	PIERCE	05/16/04	ADULT	NV
4	ESCAPE 1	05/11/05	PIERCE	06/18/04	ADULT	NV
5	UPFA 2	10/25/06	PIERCE	07/14/04	ADULT	NV
6	UPCS	10/25/06	PIERCE	07/14/04	ADULT	NV

- ☐ [ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

## 2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancement)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancement)	MAXIMUM TERM
I	9	XII	240-318 mos.	FASE 60 mos.	300-378 mos.	LIFE
II	9	IV	63-84 mos.	FASE 60 mos.	123-144 mos.	10 YRS.
III	8	III	43-57 mos.	NONE	43-57 mos.	5 YRS.

2.4 ☐ [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

- ☐ [ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- ☐ [ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: N/A

# **EXHIBIT C**

### Adjustments to standard sentences.

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9A.01.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9A.01.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9A.728(1)(c); or

(ii) Released under the provisions of RCW 9A.730;

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

Notwithstanding any other provision of law, all impaired driving enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under this chapter.

An offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c).

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (a)(i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be:

(i) Granted an extraordinary medical placement when authorized under RCW 9.94A.728(1)(c); or

(ii) Released under the provisions of RCW 9.94A.730;

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;



(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other minor child enhancements, for all offenses sentenced under this chapter. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832.

(15) Regardless of any provisions in this section, if a person is being sentenced in adult court for a crime committed under age eighteen, the court has full discretion to depart from mandatory sentencing enhancements and to take the particular circumstances surrounding the defendant's youth into account.

2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

**NOTES:**

**Reviser's note:** This section was amended by 2020 c 141 § 1 and by 2020 c 330 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective dates—2018 c 7:** See note following RCW 9.41.010.

**Effective date—2015 c 134:** See note following RCW 9.94A.501.

**Effective date—2011 c 293 §§ 1-9:** See note following RCW 46.20.385.

**Severability—Part headings, subheadings not law—2008 c 276:** See notes following RCW 36.28A.200.

**Short title—2008 c 219:** See note following RCW 9.94A.834.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 74.34.020.

**Effective date—2006 c 123:** "This act takes effect July 1, 2006." [ 2006 c 123 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

## **EXHIBIT D**

**Armed offenders.**

Notwithstanding the current placement or listing of crimes in categories or classifications of prosecuting standards for deciding to prosecute under RCW 9.94A.411(2), any and all felony crimes involving any deadly weapon special verdict under \*RCW 9.94A.602, any deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, and any and all felony crimes as defined in RCW 9.94A.533 (3)(f) or (4)(f), or both, which are excluded from the deadly weapon enhancements shall all be treated as crimes against a person and subject to the prosecuting standards for deciding to prosecute under RCW 9.94A.411(2) as crimes against persons.

[ 2002 c 290 § 14; 1995 c 129 § 4 (Initiative Measure No. 159).]

**NOTES:**

**\*Reviser's note:** RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

**Effective date—**2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

**Intent—**2002 c 290: See note following RCW 9.94A.517.

**Findings and intent—Short title—Severability—Captions not law—**1995 c 129: See notes following RCW 9.94A.510.

# **EXHIBIT E**

Table 1—Sentencing grid.

TABLE 1  
Sentencing Grid

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI Life sentence without parole/death penalty for offenders at or over the age of eighteen. For offenders under the age of eighteen, a term of twenty-five years to life.										
XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320	333	347	361	374	388	416	450	493	548
XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	220	234	244	254	265	275	295	316	357	397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136	147	160	171	184	216	236	277	318
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102	114	125	136	147	158	194	211	245	280
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
	3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
	9	12	14	17	20	29	43	57	70	84
III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
	1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
	3	8	12	12	16	22	29	43	57	68
II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent standard sentence ranges in months, or in days if so designated. 12+ equals one year and one day.

[ 2014 c 130 § 1; 2002 c 290 § 10. Prior: 2000 c 132 § 2; 2000 c 28 § 11; prior: 1999 c 352 § 2; 1999 c 324 § 3; prior: 1998 c 235 § 1; 1998 c 211 § 3; prior: 1997 c 365 § 3; 1997 c 338 § 50; 1996 c 205 § 5; 1995 c 129 § 2 (Initiative Measure No. 159); (1994 sp.s. c 7 § 512 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1992 c 145 § 9; 1991 c 32 § 2; 1990 c 3 § 701; prior: 1989 c 271 § 101; 1989 c 124 § 1; 1988 c 218 § 1; 1986 c 257 § 22; 1984 c 209 § 16; 1983 c 115 § 2. Formerly RCW 9.94A.310.]

## **NOTES:**

**Application—2014 c 130:** "Sections 1 through 9 of this act apply to all sentencing hearings conducted on or after June 1, 2014, regardless of the date of an offender's underlying offense." [ 2014 c 130 § 12.]

**Effective date—2014 c 130:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2014." [ 2014 c 130 § 16.]

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Effective date—1998 c 211:** See note following RCW 46.61.5055.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Findings and intent—1995 c 129:** "(1) The people of the state of Washington find and declare that:

(a) Armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death.

(b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping.

(c) Current law does not sufficiently stigmatize the carrying and use of deadly weapons by criminals, and far too often there are no deadly weapon enhancements provided for many felonies, including murder, arson, manslaughter, and child molestation and many other sex offenses including child luring.

(d) Current law also fails to distinguish between gun-carrying criminals and criminals carrying knives or clubs.

(2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:

(a) Stigmatize the carrying and use of any deadly weapons for all felonies with proper deadly weapon enhancements.

(b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.

(c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to

acquire firearms.

(d) Bring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes." [ 1995 c 129 § 1 (Initiative Measure No. 159).]

**Short title—1995 c 129:** "This act shall be known and cited as the hard time for armed crime act." [ 1995 c 129 § 21 (Initiative Measure No. 159).]

**Severability—1995 c 129:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1995 c 129 § 22 (Initiative Measure No. 159).]

**Captions not law—1995 c 129:** "Captions as used in this act do not constitute any part of the law." [ 1995 c 129 § 23 (Initiative Measure No. 159).]

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Application—1989 c 271 §§ 101-111:** "Sections 101-111 of this act apply to crimes committed on or after July 1, 1989." [ 1989 c 271 § 114.]

**Severability—1989 c 271:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1989 c 271 § 606.]

**Severability—1986 c 257:** See note following RCW 9A.56.010.

**Effective date—1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.



# **EXHIBIT G**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Matter of the Personal Restraint of:

LARRY D. BLACKWELL,

Petitioner.

No. 57507-8-II

ORDER DISMISSING PETITION

In this personal restraint petition, Larry D. Blackwell seeks relief from personal restraint imposed following convictions for first degree assault with a firearm enhancement, second degree assault with a firearm enhancement, and second degree unlawful possession of a firearm. Blackwell raises several issues related to the imposition of the firearm sentencing enhancements. Because this petition is time barred, it must be dismissed.

RCW 10.73.090(1) requires that a petition be filed within one year of the date that the petitioner's judgment and sentence becomes final. Blackwell's judgment and sentence became final when his direct appeal was mandated in 2008.<sup>1</sup> RCW 10.73.090(3)(b). Blackwell did not file this petition until 2022, well over one year later. Thus, Blackwell's petition is time barred unless he shows that his judgment and sentence is facially invalid or was not rendered by a court of competent jurisdiction. RCW 10.73.090(1). Or Blackwell must show that his petition is based solely on one of the enumerated exceptions to the time bar in RCW 10.73.100.

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<sup>1</sup> Mandate, *State v. Blackwell*, No. 35702-0-II (Nov. 20, 2008).

First, Blackwell argues that his judgment and sentence is facially invalid because it contains unlawful possession of a controlled substance convictions in his criminal history. CrR 7.8 Transfer 1, 3. However, establishing facial invalidity does not open the door to claims that would otherwise be time barred. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 425-26, 309 P.3d 451 (2013). Therefore, establishing that his sentence is facially invalid because his criminal history includes unlawful possession of a controlled substance convictions only entitles him to resentencing to correct that error, which has already occurred. See Notice of Appeal, *State v. Blackwell*, No. 57194-3-II (Aug. 8, 2022). Blackwell has not shown that his judgment and sentence is facially invalid as it relates to the imposition of the firearm sentencing enhancements.

Second, Blackwell argues that his claims regarding the imposition of the firearm sentencing enhancements are not time barred under RCW 10.73.100(5) because the superior court lacked jurisdiction by exceeding its sentencing authority. CrR 7.8 Transfer 1, 4. Under RCW 10.73.100(5), a petition is not time barred if “[t]he sentence imposed was in excess of the court’s jurisdiction[.]” For the purposes of RCW 10.73.100(5), “jurisdiction” refers to personal or subject matter jurisdiction. *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 441 n.5, 853 P.2d 424 (1993). “A court has ‘subject matter jurisdiction where the court has the authority to adjudicate the *type of controversy* in the action, and . . . it does not lose subject matter jurisdiction merely by interpreting the law erroneously.’ ” *In re Pers. Restraint of Vehlewald*, 92 Wn. App. 197, 201-02, 963 P.2d 903 (1998) (alteration in original) (quoting *State v. Moen*, 129 Wn.2d 535, 545, 919 P.2d 69 (1996)).

Former RCW 9.94A.533(3) (2004), in effect at the time Blackwell committed his crimes in July 2004, authorized the superior court to impose firearm sentencing enhancements as part of a criminal sentence. Blackwell's arguments that the firearm enhancements were improperly imposed in his case do not show that the superior court lacked subject matter jurisdiction. Therefore, the exception to the time bar in RCW 10.73.100(5) does not apply to Blackwell's claims.

~~Because Blackwell has failed to show that his judgment and sentence is facially~~  
invalid or that the exception to the time bar in RCW 10.73.100(5) applies, Blackwell's petition must be dismissed as time barred. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

  
PRICE, ACTING CHIEF JUDGE, PRO TEM

cc: Larry D. Blackwell  
Pierce County Clerk  
County Cause No(s). 04-1-03569-6  
Kristie Barham